IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5431 OF 2005

Bankimchandra Makanbhai Patel,
aged 34 years, residing at 102,
Ganapati Apartment, Virat Nagar,
Virar (West),
Taluka Vasai, Dist. Thane. ... Petitioner

Versus

1. State of Maharashtra,
through its Secretary,
Tribunal Development Department,
Mantralaya, Mumbai 32.

2. Scheduled Tribe Certificate
Scrutiny Committee, Konkan Division,
Thane through its Deputy Director (R),
and Member Secretary, having its
office at Wagale Estate, Thane (West),
Dist. Thane. ... Respondents

Mr. R.K. Mendadkar for Petitioner.

Mr. C.R. Sonawane, A.G.P. for State.

CORAM : F.I. REBELLO &
MRS R.S. DALVI**.JJ.**
DATED : NOVEMBER 23, 2005

ORAL JUDGMENT (Per F.I. Rebello,J.):

. Rule. Heard forthwith.

2. The Petitioner claims to belong to Dhodia tribe which is recognized as a scheduled tribe pursuant

to issuance of the presidential notification under Article 342(1) of the Constitution of India both in the State of Gujarat as also in the State of Maharashtra. The Petitioner's father was born on 2.6.1953 at village Pitha, Taluka Chikhali, District Valsad now in State of Gujarat. The Petitioner's father was employed with the Western Railway since 23.1.1976. The Petitioner was born on 15.8.1979 at village Pitha, Valsad in the State of Gujarat. Petitioner's and his father's caste is shown as "Hindu Dhodia". It is the case of the Petitioner that he was granted certificate of domicile on 4.2.1997 by the Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai setting out that the Petitioner is a domicile of State of Maharashtra. The Petitioner sought admission to the Engineering degree course and as such he moved Respondent No. 2 which is the Tribe scrutiny committee for validating his tribe certificate. The Committee, however, was pleased to invalidate the certificate holding that the Petitioner is a migrant from the State of Gujarat to the State of Maharashtra and therefore, not entitled to the benefits in the State of

Maharashtra. The Petitioner challenged the order before this Court in Writ Petition No. 4897 of 1997. The Petition was admitted and interim relief was granted. Consequent thereupon the Petitioner completed the B.E. degree course from the University of Mumbai in the year 2004. The Writ petition came up for hearing and was disposed of by order dated 14.10.2004. It is the contention of the Petitioner that the learned Division Bench was pleased to hold that for deciding the issue as to whether the Petitioner is migrant from the State of Gujarat to the State of Maharashtra, what is relevant is the date of notification of the Presidential Order under which the Petitioner claims to belong to such caste/tribe. In view of that, the order dated 25.8.1997 was set aside and the second respondent committee was directed to consider the caste claim of the Petitioner on merits, without raising objection that the Petitioner's family has migrated from Gujarat. The Respondent No. 2 committee was directed to consider the caste claim within the period of six months from 14.10.2004.

4. Petitioner appeared before the committee at Pune. The proceedings however, were transferred to the committee at Thane by Order dated 8.11.2004. The Vigilance Officer of the Committee gave his report setting out that the Petitioner was a migrant from the State of Gujarat to the State of Maharashtra. Based on the report, show cause notice was issued to the Petitioner to file his reply. Show cause notice proceeded on the footing that the Petitioner should submit proof of residence of his family prior to 1950 in the State of Maharashtra. The Petitioner has filed his reply and it is the case of the Petitioner that he drew the attention of the committee to the order of this court whilst remitting the matter back to the committee. Inspite of that the committee held that the Petitioner is a migrant from the State of Gujarat and is not entitled to avail of the benefits of scheduled tribe in the state of Maharashtra by its order dated 21.5.2005 which was communicated to the Petitioner by endorsement dated 4.7.2005 and received by the Petitioner on 11.7.2005. It is this order which is the subject matter of the present petition.

5. The principal contention as urged on behalf of the Petitioner by the learned counsel is that after this court in Writ Petition No. 4897 of 1997 by its judgement dated 14.10.2004 had remanded the matter back to the committee to consider the case of the Petitioner on merits without raising the objection that the Petitioner's family is migrant from Valsad, the Committee acted without jurisdiction and clearly in violation of the order of this court when it considered that issue afresh and consequently the impugned order is liable to be set aside. It is submitted that the Presidential Order was issued on 10.08.1950 when there was no state of Maharashtra in existence but the old Bombay State. The Petitioner's ordinary place of residence was within the jurisdiction of old Bombay State and as such for all purposes, the Petitioner would be entitled to protection in the State of Maharashtra.

. On the other hand on behalf of the committee, an affidavit has been filed by Mr. V.N. Thombre, Senior Research Officer, Deputy Director (R),

Scheduled Tribe Caste Certificate Scrutiny Committee, Konkan Division . It is set out therein that the State Reorganization Act came to be passed in the year 1956 and many States in the Union of India were re-organized in accordance with the provisions of the Act. The larger Bombay State survived from 1956 to 1960. The Bombay Reorganization Act (11 of 1960) came to be passed by the Parliament in 1960, whereby the larger State of Bombay was bifurcated into two States namely Gujarat and Maharashtra. Under the provisions of the Bombay Reorganization Act, 1960, the appointed date is 1.5.1960 and eleven districts of erstwhile Bombay State were separated and those eleven districts with six other districts were to form the State of Gujarat.

. Sections 26 and 27 of the Act deal with amendment of the Scheduled Caste and Scheduled Tribe order respectively. The explanatory note appearing after the 8th Schedule to the Act reads as follows :

"Any reference in Parts IV and VII-A of

> the Schedule to a State, or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division constituted as from the 1st day of May, 1960."

. A reading of the same, it is contended, means that the claimants whose permanent residence is in the present State of Maharashtra are only entitled to Scheduled tribe status in Maharashtra. It is therefore, submitted that considering the Bombay Reorganization Act, the petitioner cannot claim any benefits for local employment or studies in the State of Maharashtra. 5. The question, therefore, which arises is, whether a person born in geographical area forming part of erstwhile state of Bombay at the time of the Presidential Notification on 10.8.1950 and now not included in the geographical area of the State of Maharashtra is entitled to the benefits of reservation in the State of Maharashtra or local bodies, Corporation or companies where the scheduled tribe is notified as S.T. in the old Bombay State and also in the

State of Maharashtra, if he was not resident in the State of Maharashtra on 1.5.1960.

. We must firstly consider the judgement of this court to which the learned counsel for the Petitioner has drawn our attention namely in the case of Shri. Bankimchandra Makanabhai Patel Versus State of Maharashtra and Others in Writ Petition No. 4897 of 1997 decided by the Division Bench of this Court on 14th October, 2004. It is no doubt true that the learned Division Bench of this court in the judgment had been pleased to observe as under :

> "The Scrutiny Committee is directed to consider the caste claim of the Petitioner on merits without raising objection that the Petitioner’s family has migrated from Valsad."

. Considering these observations, the committee was bound to follow the judgement of this court. It appears that the committee did not address itself to this issue considering the new material

before it, namely the two Acts and the Vigilance cell report. The attention of the learned Division Bench it appears, was not invited to the provisions of the State Reorganization Act as also the Bombay State Reorganization Act, 1960. The committee relied on the said Acts to take a view that it is only persons who are permanent residents in the State of Maharashtra on 1.5.1960 at the time of State of Maharashtra came into being, who alone are entitled to the benefits of reservation at the state level for SC/ST notified for the State of Maharashtra. The Committee normally ought to have moved this court for review of its order instead of itself relying on the new material. All Tribunals subject to the supervisory jurisdiction of this court are bound to follow and implement the orders of this Court. Having said so and as the issue is at large before us, the question is whether the view of the Committee can be sustained.

. We may now refer to the judgment in the case of Mrs. Chetna w/o. Rajendra Tank Versus The Committee for Scrutiny of Caste Certificates of persons and Ors. in Writ Petition No. 2569 of

2005 decided on 24th June, 2005 by Nagpur Bench and reported in 2005 (4) Mh.L.J. 711. A Division Bench of this Court to which one of us (Rebello,J.) was party, was addressing a similar question as to the entitlement of a migrant for benefit of reservation in the State of migration, when the caste/tribe was notified as backward in both the States. In that case, the Petitioner claimed to belong to the caste Gurjar which has been recognized by the State of Maharashtra as "Other Backward Category". The Petitioner therein was born in the State of Bihar and had studied in the state of Madhya Pradesh and had migrated to the state of Maharashtra consequent to marriage. Reliance was placed on the observations in the case of Marry Chandra Shekhar Rao Versus Dean, Seth G.S. Medical College and Others, (1990) 5 S.C.C. 130. The Apex Court in the said judgement had posed to itself the following question :

> "Whether one who is recognized as a Scheduled Tribe in the State of his origin and birth continued to have the benefits or privileges or rights in the

> State of migration or where he later goes?"

. The Apex Court there held that the migrant to the State was not entitled to be admitted to the medical college. The matter had again came up before the Apex Court in the case of Action Committee On The Issue of Caste Certificate To Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another Versus Union of India and another (1994) 5 S.C.C. 244. The issue as now raised was in issue therein. The Constitution Bench of the Apex Court held that even if the caste or tribe is notified in both the States, and if such person migrates from one state to another, it does not mean that such person is entitled to the benefits and privileges admissible to the member of similar caste or tribe which is notified in the migrant State. Having said so, the law was summarised in the judgement of the Court as under :

> (1) A person belonging to a caste or tribe which is notified for that state is entitled to the benefits wholly in that

> State and not the State where he/she migrates.
>
> (2) If a caste or tribe is notified as a caste or tribe in both the States, it does not necessarily mean that the migrant is entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste or tribe of the migrant State.

. In Sudhakar Vithal Kumbhare Versus State of Maharashtra, (2004) 9 S.C.C. 481, in the case of migrant from one State to another and more so in the case where earlier region was one and that has been bifurcated, the Court observed thus:

> "In a case of this nature the degree of disadvantages of various elements which constitute the input or specification may not be totally different and the State of Maharashtra even after reorganization might have agreed for inclusion of the said tribe Halba/Halbi as a Scheduled

> tribe in the State of Maharashtra having regard to the said fact in mind."

. The issue was not answered. The attention of the Apex court was not invited to the provisions of the State Re-organization Act as also the Bombay State Reorganization Act.

6. We may gainfully refer to the circular issued by the Government of India dated 22.3.1997 for the following observations :

> "Thus the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the literal or ordinary sense of the word. On the other hand, it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste/tribe in relation to that locality. Thus a person who is temporarily away from his permanent place

> of abode at the time of the notification of the Presidential Order applicable in his case, say for example, to earn a living or seek education, etc. can also be regarded as a Scheduled Caste or a Scheduled Tribe, as the case may be, if his caste/tribe has been specified in that Order, in relation to his State/U.T. But he can not be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his caste/tribe has been scheduled in respect of that area in any Presidential Order."

. The relevant provisions of the Constitution of India, the Bombay Reorganization Act, 1960 and the provisions of the Scheduled Caste and Scheduled Tribes Orders (Amdt) Act. 1956 as amended from time to time may now be adverted to. Articles 341 and 342 use similar language and as such we may only reproduce Article 342 of the Constitution of India as in the instant case a tribe is involved. The Article reads as under :

"342.(1) The President may with respect to any State or Union territory and where it is a State after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or part of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under Clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. "

. It would thus be clear from a reading of the

article, that the power is conferred on the President after consultation with the Governor by public notification to specify tribes or tribal communities or part of the groups within the tribes or tribal communities which for the purpose of the constitution shall be deemed to be scheduled tribes in relation to that State or Union territory as the case may be.

. Next we may refer to the relevant provisions of the Bombay Reorganization Act, 1960 which received the assent of the President of India on 25.4.1960 and in respect of which, the appointed date has been fixed as 1.5.1960. Sections 26 and 27 of the Act are relevant and may be gainfully reproduced :

> "26. As from the appointed day, the Constitution (Scheduled Castes) Order, 1950 shall stand amended as directed in the Seventh Schedule.
>
> 27. As from the appointed day, the Constitution (Scheduled Tribes) Order, 1950, shall stand amended as directed in

the Eighth Schedule."

. The 8th schedule amended the Constitution (Scheduled Tribes) Order, 1950. Para 3 was substituted as under :

> 3. Any reference in this Order, except Parts IV and VII-A of the Schedule, to a State or to a district or other territorial division thereof, shall be construed as a reference to the State, district or other territorial division, constituted as from the 1st day of November, 1956, and any reference in Parts IV and VII-A of the Schedule to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division, constituted as from the **1st day of May, 1960."**

. We may also refer to Para 2 of the Constitution (Scheduled Tribes) Order, 1950 which reads as

under:

> "2. The tribes or tribal communities, or parts of or groups within, tribes or tribal communities, specified in (Parts) to (XVIII) of the Schedule to this Order shall, in relation to the States to which those parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule."

. Part IV was substituted by inserting Part IV-Gujarat. The notified Schedule Tribes in the State of Gujarat are set out therein. Part VIIA is for Maharashtra and notified Scheduled tribes in the State of Maharashtra are set out therein.

8. Before we deal with the effect of the provisions of the Constitution, Bombay Reorganization Act, 1960, States Reorganisation

Act, 1956 and the presidential order, 1950 which was amended by the Bombay State Reorganization Act, let us consider the judgements which were cited before us, by the learned counsel for the Petitioners to contend that it was not open to the committee considering the judgment of this court in Shri. Bankimchandra Makanbhai Patel Versus State of Maharashtra and Ors. decided on 14th October, 2004 in Writ Petition No. 4897 of 1997 to go into the issue that the Petitioners family had migrated from Valsad. The learned Division Bench as it appears, has proceeded on the footing that Valsad District was part of the erstwhile State of Bombay and if therefore, a person was resident in the state of Bombay on the date of the Presidential Order, such a person would be entitled to the benefit of reservation in the State of Maharashtra. If that tribe was also notified in the State of Maharashtra and what is to be taken into account is the date of the presidential order, which is 10.8.1950.

. Similarly our attention was invited to the judgement of another Division Bench of this court

in Writ petition No. 2736 of 1998 in the case of Kum. Rachana Shashikant Champaneri Versus State of Maharashtra through its Secretary, Social Welfare Department and others decided on 18.6.1998. That was an exparte judgement as can be seen from the appearance from the copy of the judgement filed before this court. In that case, the petitioners' father was born in Valsad in 1947. He migrated to Bombay in 1965. The Petitioner was born in Bombay on 14.11.1980. The caste was Mochi which has been notified as scheduled caste by the presidential order issued on 10.8.1950. On that date, Valsad was part of the State of Bombay. The learned Division Bench proceeded to observe that the fact that Valsad formed part of State of Gujarat with effect from 1.5.1960 will not deprive the Petitioners' father and Petitioner from the benefits of the aforesaid presidential order dated 10.8.1950. Again reference was made to the judgment of the Action Committee (supra). From that it appears that this court held that the relevant date for considering the benefits is the date of the presidential order.

. Based on these two judgments, it was sought to be pointed out that apart from the committee failing to comply with the judgment of this court, this court will have to follow the said judgments and in the event it dis-agrees with the views taken by the two division Benches, the only recourse it can have is by referring the matter to a larger Bench.

. On the other hand on behalf of the Respondents, it is pointed out that the committee has noted the provisions of the Bombay Reorganization Act, which was not noted, by both the Division Benches. Our attention is also invited to the fact that the committee referred to the 8th schedule of the Bombay Reorganization Act, which substituted the Constitution (Schedules Tribe) Order, 1950. It is pointed out, that had these provisions been brought to the notice of the Division Benches, they could not have taken the view as taken by them. It is submitted therefore, that the two judgments having not considered the provisions of the Bombay Reorganization Act, 1960 do not lay down the correct law and as such would not be binding and

consequently the question of making a reference does not arise. This apart from the fact that one was an exparte judgment and normally not of binding force.

9. Before deciding the controversy as to whether the reference ought to be made, let us examine the effect of the provisions of the Bombay Reorganization Act, 1960. Before that, we may consider the provisions of the State Reorganization Act, 1956. By Section 8 of the State Reorganization Act, 1956, a new state was constituted known as State of Bombay comprising of territories as set out therein. The Presidential order was issued in the year 1950. The State of Bombay as constituted in 1956 was then not existing but a larger geographical area. From the appointed date, which was 1st November, 1956 the new State of Bombay came into being along with various other States. Section 41 of that Act reads as under :

> "41. As soon as may be after the commencement of this Act, the President shall by order make such modifications in

> the Constitution (Schedules Castes) Order, 1950, the Constitution (Scheduled Castes) (Part C States) Order, 1951, the Constitution (Scheduled Tribes) Order, 1950 and the Constitution (Scheduled Tribes) (Part C States) Order, 1951, as he thinks fit having regard to the territorial changes and formation of new States under the provisions of Part II."

. The Constitution (Scheduled Tribes) Order, 1950 came to be amended by the Scheduled Caste and Scheduled Tribes Orders (Amendment) Act, 1956, This was necessitated on account of the new states coming into being, pursuant to the State Reorganization Act, 1956. The order as modified shows the S.C. and S.T. communities in regard to the new State of Bombay which came into being on 1.11.1956 the appointed date. The Presidential Order therefore, came to be modified in 1956 setting out the notified S.C. s and S.T.s in the new State of Bombay. We have reproduced earlier Article 342 for the sake of discussion. Article 342(1) expressly set out that the scheduled tribes

would be in relation to that State or Union territory. In other words, the tribes which were excluded pursuant to State Reorganization Act, 1956 ceased to be S.T. in relation to that State or Union territory.

. We may now consider Section 26 and 27 and also the VIIth and VIIIth schedules to the Bombay Re-organization Act, 1960. By virtue of the VIIIth schedule, the tribes for the State of Gujarat and Maharashtra were notified in Part IV and Part VII-A respectively. In other words, the amendment to the presidential order in 1956, gave way to the amendment brought to the Constitution (schedule Tribes) Order, 1950 by the Bombay Reorganization Act, for which the deemed date is 1.5.1960. Therefore, as on 1.5.1960 only those tribes included in the 8th schedule amending the Constitution (Schedules Tribes) Order 1950, would be the notified scheduled tribes in the State of Maharashtra and would exclude those tribes which earlier were in the erstwhile state of Bombay but excluded by the Amendment of 1st May, 1960. Para 3 of the Constitution (Scheduled Tribe) Order, 1950

has an important bearing as it makes reference in the order to the State, district or other territory, divisions as on 1.5.1960 which read with Article 342 would mean those notified S.T. in the State of Maharashtra as on 1.1.1960. The other important part is paragraph 2 of the order which uses the expression :

> ".... so far as regards members thereof resident in the localities specified in relation to them respectively in those parts of that Schedule."

. In other words, though the presidential notification was issued in the year 1950 because of the State Reorganization Act, 1956 and Bombay State Reorganization Act, the benefits would be available to only those persons amongst the notified schedule tribes who are residents in the localities. In other words, if on 1.1.1960, when the State of Maharashtra came into being, if there was a person belonging to any of the notified scheduled tribes in the State of Maharashtra and if he was resident in the localities in the State of Maharashtra only

then shall such person will be entitled to the benefits as a member of the scheduled tribe in relation to that State provided he was also resident in the erstwhile state of Bombay on the date of the Presidential Notification dated 10.8.1950 and on 1.11.1956 when the new state of Bombay came into being. This would mean that only those members of the Scheduled tribes who are included as a notified scheduled tribes in the State of Maharashtra and who were and are permanent residents in the State of Maharashtra and in the localities in which they are notified as on 1.1.1960, would be entitled to be treated as S.T. in relation to the State of Maharashtra. This aspect has not been considered by both the division Benches as their attention was not drawn to the same. The same reasoning will also apply in so far as scheduled castes are concerned.

. If such construction is not accepted and the date of the Presidential notification i.e. 10th August, 1950 is considered, then all S.T.s and S.C.s in the erstwhile geographical area of the Bombay Province on the coming into force of the

Constitution on the date of the Presidential Order would be S.T. or S.C. for the new State of Bombay which came into being on 1.5.1960 though they were not ordinary resident of the State on 1.5.1960. This would mean that S.C.s or S.T.s in the earlier geographical region of Bombay State as on 10.8.1950 if included, as S.C.s or S.T.s in a State, not forming a part of the new State of Maharashtra, if also notified as S.C.s and S.T.s in the State of Maharashtra, though not resident in the state of Maharashtra as on 1.1.1960, would be entitled to the benefits. This would increase the population of S.C.s and S.T.s for the State of Maharashtra, and would deny to the members of the S.C.s or S.T.s resident in the State of Maharashtra as on 1.1.1960 the benefits of reservation as they would have to share the same with S.C.s and S.T.s having similar nomenclature from other States which formed the erstwhile State of Bombay as on 1.8.1950.

10. Let us now see the consequences of following the judgment of the two division Benches which also have placed reliance on the judgment of the Apex Court in the case of Action Committee (supra). It

may be made clear that the judgment in Action Committee (supra) has nowhere taken the view that a person not resident in the new State of Maharashtra as on 1.5.1960 is entitled to the benefits of reservation in the State of Maharashtra.

. The effect would be that when the presidential notification of 1950 was issued on 10.8.1950, the notified scheduled castes and schedules tribes in those states before the State Reorganization Act, 1956 and the Bombay State Reorganization Act, 1960, though they may not be resident in the localities within the State of Maharashtra on 1.11.1956 or 1.5.1960, shall be entitled to claim benefits in the state of Maharashtra even though on the cut off dates, they were residents in the localities in some other states, like in the instant case in the state of Gujarat. Not only that they will be entitled to benefits both in the State of Maharashtra as also in the State of Gujarat. As in the instant case, the father was born in the area of the Bombay State now in the State of Gujarat. This will totally defeat both the intention of

Articles 341 and 342 which set out "in relation to that State" as also the Presidential Order of 1950 as amended in 1956 and then in 1960. This view will clearly run contrary to the State Reorganization Act, 1956 and the Bombay State Reorganization Act, 1960. It is clear therefore, the view taken by both the division Benches and possibly other benches which has followed the judgments, was a view taken without taking into consideration the State Reorganization Act, 1956 and Bombay State Reorganization Act, 1960 and as such are per incuriam being judgments passed without considering the provisions of the two Central Acts.

. In our opinion, therefore, it is not necessary that the matter be referred to a larger Bench, more so considering the consistent view of the Apex Court that migrants are not entitled to the benefits of reservation in the State of migration but are entitled to the benefits in the state of the ordinary residence on the date of the Presidential Notification as amended from time to time.

. In Action Committee (supra), the issue before the Apex Court was as under :

> "Whether a person belonging to a caste or tribe specified for the purposes of the Constitution to be a Scheduled Caste or a scheduled tribe in relation to the State A migrates to State B where a caste or tribe with the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to the Scheduled Caste and/or Scheduled Tribes in State B."

. The Constituted Bench quoted from the Judgment of Marry Chandrashekhar Rao’s case (supra) :

> "Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if

> there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste or the latter State "for the purposes of this Constitution."

. In other words, migrant will not be entitled to the benefits even if such migrant has the same nomenclature as notified in the state of migration for the benefits in the state of migration. They would be entitled to benefits only in the State where they were resident at the time of the State Reorganization Act and Bombay State Reorganization Act or a like Act.

11. Having so held, we are clearly of the opinion that a member of the S.T. notified for the State of Maharashtra who are resident in the state of Guajrat or other State and who might have been S.T.s notified in the erstwhile State of Bombay as and from 1.1.1960, bearing in mind Article 342 of the Constitution of India and Paragraph 2 of the

Constitution (Scheduled Tribes) Order 1956, after 1.1.1960 if they are not resident on that date in the state of Maharashtra, would not be entitled to the benefits for the notified S.T.s in the State of Maharashtra. The same reasoning would also apply to S.C.s.

12. Coming to the facts of this case, the admitted position is that the Petitioners father was born in Valsad District of State of Gujarat and migrated to Bombay in the year 1972. In these circumstances, the Petitioner would be entitled to have the benefits in the state of Gujarat and not in the State of Maharashtra. The Petitioner however, is a student who took benefit and was admitted to the Engineering Course and has completed his B.E. degree from University of Mumbai in the year 2004. Considering the Judgment of the Apex Court in the case of Students, specially in the case of Kumari Madhuri Patil Versus Addl. Commissioner, Tribal Development and Others, 1999 S.C.C. (L&S) 1349 it will not be possible for us to cancel the degree already obtained. Though we are not cancelling the degree, as the caste certificate was not based on

fraud and the view taken by the earlier Division Bench Judgment, the Petitioner would not be entitled to benefit of reservation based on the degree obtained by him, in the State of Maharashtra.

. Rule discharged. There shall be however, no order as to costs.

(F.I. REBELLO,J.)

(MRS. R.S. DALVI,J.)